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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON**

In the Matter of

NO. G 02-45

THE APPLICATION REGARDING
THE CONVERSION AND
ACQUISITION OF CONTROL OF
PREMERA BLUE CROSS AND ITS
AFFILIATES

OIC STAFF'S RESPONSE TO
PREMERA'S MOTION TO CLARIFY
SEVENTEENTH ORDER AND
DECLARE FORM A COMPLETE

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Premera has filed a Motion to Clarify Seventeenth Order and Declare Form A Complete. The motion requests that the Commissioner: (1) declare the Form A statement complete; (2) direct OIC Staff's consultants to prepare a supplemental report, to issued prior to the public hearings in December, on the stock ownership plan Premera submitted on October 17, 2003; and (3) revise certain language in the Seventeenth Order. *See* Motion to Clarify.

The motion should be denied. The Commissioner has already directed OIC Staff to have expert reports on the stock ownership plan prepared as soon as possible.¹ Premera failed to remedy all remaining deficiencies in its Form A, or otherwise abide by the Commissioner's October 15, 2003 deadline to amend, so the Form A Statement for purposes of this application process was closed on that date. To the extent the Commissioner should entertain evidence

¹ OIC Staff has coordinated with the appropriate experts, and expects to have their analysis of the stock ownership plan reports completed by November 26, 2003. Whether those reports will be available for dissemination prior to the first public hearings on December 2 as requested in Premera's motion will in large measure depend on Premera's redaction efforts. In any event, the reports should be available for submission at the latest by the December 19 submission of OIC Staff's pre-filed testimony, as directed by the Commissioner.

1 with respect to information submitted by Premera after October 15 in reviewing the terms of
2 the proposed transaction remains to be resolved in further proceedings, where those issues can
3 be fully developed through appropriate briefing. It is therefore unnecessary and premature at
4 this time to amend the language of the Seventeenth Order that defines the terms Premera's
5 application that are the subject of review in these proceedings.

6 **II. THE FORM A WAS FINALIZED FOR PURPOSES OF THIS APPLICATION**
7 **ON OCTOBER 15, 2003**

8 Premera was required to promptly amend its Form A statement when information
9 provided in the statement changed. WAC 284-18A-360. The Commissioner established
10 October 15, 2003 as the deadline for Premera to file any amendments to the statement.
11 Thirteenth Order: Setting Revised Case Schedule (Sept. 18, 2003); Eleventh Order: Case
12 Schedule (Aug. 19, 2003). *See* RCW 34.05.449; WAC 10-08-130. Premera did not object to
13 that deadline. Therefore, if Premera intended to make any changes or additions in any of the
14 information provided in the Form A statement, they were required to be submitted by that
15 date. On September 10, 2003 the Commissioner provided Premera with a schedule that
16 listed three deficiencies to the Form A statement. The Commissioner withdrew one of the
17 listed deficiencies leaving only two: Exhibit G-10 relating to restrictions and limitations on
18 stock ownership plans for management and employees, and two incomplete schedules
19 contained in Exhibit G-11 pertaining to the transfer of assets and liabilities to the proposed
20 Alaska for-profit subsidiary of Premera.

21 In response to the list of deficiencies, Premera submitted a stock ownership plan, but
22 only did so on October 17, 2003, after the deadline to amend the Form A statement had
23 passed. The Form A statement remains subject to this deficiency. With respect to the
24 Exhibit G-11 deficiency, Premera suggests that the information may be found elsewhere in the
25 Form A statement. Motion at 3. However, the information relied upon by Premera is a "pro
26 forma" list of categories of assets and liabilities and does not reflect with specificity the assets

1 and liabilities intended to be transferred, as is required for the Form A. *See* Declaration of
2 James E. Tompkins, submitted herewith. If an applicant is unable to provide the specificity
3 required, it may follow the process established by WAC 284-18A-320(2). Premera failed to
4 submit the request contemplated by that regulation. The Form A statement remains subject to
5 this deficiency as well.

6 The Commissioner should not declare the Form A “complete.”

7 **III. NOTHING HAS CHANGED TO ALTER OR AMEND THE SUBJECT OF**
8 **REVIEW IN THESE PROCEEDINGS**

9 Notwithstanding the Commissioner’s direction to OIC Staff to have its experts review
10 the late-filed stock ownership plan, there has been no determination of any need to consider
11 those reports, or any other information on any data late-filed by Premera, in the
12 Commissioner’s review of the proposed transaction. Premera’s proposed amendment to the
13 text of the Commissioner’s Seventeenth Order, premised as it is on the assumption that there
14 will be consideration of such information, is therefore unwarranted. The request to amend the
15 Seventeenth Order should be denied as premature.

16 **IV. CONCLUSION**

17 For the reasons set forth and argued above, OIC Staff requests that Premera’s motion
18 be denied.

19 RESPECTFULLY SUBMITTED this 7th day of November, 2003.

20
21 Respectfully submitted,
22 CHRISTINE O. GREGOIRE
23 Attorney General

24 _____
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